BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of Universal Service Contribution Methodology A National Broadband Plan for Our Future	WC Docket No. 06-122 GN Docket No. 09-51

COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION AND THE PEOPLE OF THE STATE OF CALIFORNIA

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I. INTRODUCTION AND SUMMARY

The California Public Utilities Commission and the People of the State of California (CPUC or California) submit these comments in response to the Further Notice of Proposed Rulemaking (FNPRM) released by the Federal Communications Commission (FCC or Commission) on April 30, 2012, in the above captioned dockets.[1] In this *FNPRM*, the FCC seeks comments on proposals to reform and modernize how Universal Service Fund (USF or Fund) contributions are assessed and recovered in light of the transformations in the "telecommunications ecosystem" since 1996.[2] It requires that any revision to the contributions methodology promote efficiency, fairness, and sustainability of the USF programs.[3]

Specifically, the FCC seeks comment on the following issues:

- Who should contribute to the USF
- How contributions should be assessed
- How the administration of the contribution system can be improved
- How the Fund contributions should be recovered from consumers[4]

The CPUC makes the following recommendations.

First, the FCC should broaden the contribution base to include all services that touch the public communications network (PCN). In the alternative, the base of contributors should be broadened to include, at the least, text messaging service, one-way

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[1] *In the Matter of Universal Service Contribution Methodology; A National Broadband Plan for Our Future*, Further Notice of Proposed Rulemaking, WC Docket No. 06-122; GN Docket No. 09-51 (filed Apr. 30, 2012). (*FNPRM*)
[2] *Id.,* at para. 4.
[3] *Id.,*at para. 5.
[4] *Id.*

Voice over Internet Protocol (VoIP) service, and broadband Internet access service. Second, the CPUC supports a reformed revenue-based contribution system as the most effective way to assess contributions. Third, we urge the Commission to lower costs and improve the administration of the contribution system by calculating the adjustment of the contribution factor over a period of two quarters and moving to a six-month or annual contribution assessment. Fourth, California opposes prohibiting the inclusion of the USF surcharge as a line item on customer bills. And, finally, the CPUC urges the Commission to prohibit all contributors from assessing contributions on Lifeline services.

II. DISCUSSION

A. Who Should Contribute To the USF

The FCC seeks comment on its rules regarding which services and service providers must contribute to the USF in order to reduce uncertainty, minimize competitive distortions, and ensure the sustainability of the Fund.[5] In particular, it seeks comment on two alternative approaches: (1) using its permissive authority, and/or other tools, to clarify or modify on a service-by-service basis which particular services or providers should be required to contribute to the Fund; or (2) adopting a more general definition of contributing interstate telecommunications providers that could be more future proof as the marketplace continues to evolve.[6]

The State Members of the Joint Board (State Members) have proposed that the FCC broaden the contributions base to include "all services that touch the public

[5] *Id.,* at para. 22.
[6] *Id.,* para. 29.

communications network."[7] Using this definition, "public communications network" would be defined as the "interconnected communications network that uses public rights of way or licensed frequencies for wireless communications."[8] This would include broadband and services that are closely associated with the delivery of broadband, including DSL, cable and wireless broadband.[9] This method could result in services, such as ISP services, that are traditionally bundled with broadband services, also being surcharged.[10] However, pure content delivered by non-telecommunications carriers would not be required to contribute.[11]

The CPUC recommends that the FCC support the State Members' approach to broadening the contribution base. This definition would allow the FCC to include others services in the future without continually updating a list of services subject to assessment. Furthermore, this approach would allow the FCC to make certain exclusions in the future if it finds that it is in the public interest to do so.

California also supports the FCC's adoption of its proposed general rule that contributions be assessed on *"[a]ny interstate information service or interstate telecommunications is assessable if the provider also provides the transmission (wired or wireless), directly or indirectly through an affiliate, to end users."*[12] Adoption of this rule would ensure that those "entities that provide transmission to their users, whether

[7] Comments of State Members of Universal Service Joint Board, WC Docket No. 10-90 *et al* (filed May 2, 2011) at 118.

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *FNPRM* at para. 75.

using their own facilities or by utilizing transmission service purchased from other entities"[13] are included as contributors to the Fund. This proposal would be consistent with past FCC precedent where it "exercised its permissive authority to extend USF contribution requirements to providers of telecommunications that are competing directly with common carriers."[14]

In the alternative, if the FCC chooses to modify the contribution obligations by specifically identifying each service subject to the surcharge, the CPUC recommends that at least text messaging, one-way interconnected VoIP, and broadband and broadband Internet access service be included as assessable services. It would be in the public interest to include these services because a significant amount of communication is now traveling via these media. Including these services would reduce market distortions and would bring the contribution factor down significantly. In addition, all these services are now, or will soon be, benefiting from USF subsidies.

1. Text Messaging

Currently, some carriers report text messaging revenues as assessable telecommunications revenues and other carriers report these as non-assessable information services revenues.[15] Explicitly including text messaging as an assessable service would reduce the competitive advantage created by those who currently choose not to list text messaging as assessable. Furthermore, in the most recent Mobile Wireless Competition Report, the Commission stated that "'consumers are increasingly

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[13] *Id.,* at para. 76.

[14] *Id.*

[15] *Id.,* at para. 49.

substituting among voice, messaging, and data services, and, in particular, are willing to move from voice to messaging or data services for an increasing portion of their communication needs.'"[16] As text messaging becomes a substitute for traditional telephony, it should also be assessed for contributions to the USF.

2. One-way VoIP

In 2006, the FCC found that it is in the public interest to extend universal service contribution obligation to two-way interconnected VoIP providers because they benefit from universal service. The FCC found that much of the appeal of VoIP services to consumers derives from the ability to place calls to and receive calls from the PSTN.[17]

This rationale can also be applied in the context of one-way interconnected VoIP services. Additionally, increasingly consumers are using these services in lieu of traditional voice telephony.[18] Furthermore, some companies have reported to the FCC that one-way interconnected VoIP providers compete with traditional telephone providers and two-way interconnected VoIP providers[19], and indeed, some VoIP service providers market their voice telephony service as a substitute for traditional voice telephony. Therefore, California supports assessing USF contributions on one-way interconnected VoIP service.

3. Broadband and Broadband Internet Access Service

Although broadband Internet access service has been classified as an information service, the FCC recognized that such a service also includes the provision of

[16] *Id.,* at para.. 54
[17] *Id.,* at para. 59.
[18] *Id.*
[19] Letter from Brad E. Mutschelknaus, Counsel, XO Communications, LLC to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, (filed Sept. 17, 2010).

telecommunications.[20] The CPUC supports using this interpretation in order to assess contributions on Internet access service since it recognizes the distinction between transmitting broadband Internet access service and the provision of content through that transmission.

In November 2011, the FCC implemented the Connect America Fund expanding the high cost support program to include broadband services. Then, in January 2012, the FCC established a Broadband Adoption Pilot Program for broadband Internet access service under the federal Lifeline program. Since broadband Internet access service providers will now benefit from USF contributions, it would be only equitable that they also contribute to the Fund.

Although some commenters have raised concerns that requiring broadband Internet access service providers to contribute to the fund could deter broadband adoption, California notes that the inclusion of more services and service providers into the Fund would result in a reduction of the percentage contribution required from each subscriber, particularly since the FCC does not intend for the dollar amount of the total Fund to grow. Assuming the FCC is able to constrain growth in the Fund, State Members of the Joint Board have opined that expanding the revenue base to include broadband could reduce the contribution rate to as little as 2 percent.[21]

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[20] *FNPRM* at para. 66.

[21] *Id.,* at para. 69.

B. How Should Contributions Be Assessed

The FCC explores four options, based on revenues, connections, numbers, or a hybrid system, for reforming how the Fund contributions should be calculated.[22] As discussed below, the CPUC urges the FCC to continue to use a revenue-based system, but to also reform the current system by broadening the contribution base, and by improving the administration of the current system. This would be preferable to creating an entirely new contribution scheme that is based on technologies and services that are continuously evolving.

1. Revenue-Based System

Many proponents for a different regime reason that a revenue-based system is not sustainable because of the past steady increases in the contribution factor.[23] However, besides increased spending pressures, this increase is caused, in part, by consumers' substituting competing technologies that are not currently contributing to the Fund. Adding these competing communications services to the list of assessable services will help alleviate this problem.

A revenues-based system is still preferable at this time to other proposed systems because it is more equitable than a numbers-based, a connection-based, or a hybrid-based system. Under a revenue-based system the burden is relative to the volume of the service consumed. Those consumers who use the most services have the greatest burden. According to Keep USF Fair Coalition (Coalition), which represents consumer advocacy groups, a change to a numbers or connections-based contribution methodology would

[22] *Id.* at para. 96.
[23] Letter from David B. Cohen, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122 et al., at 4 (filed Mar. 28, 2012).

most negatively impact low income, seniors, disabled, and rural Americans.[24] The Coalition performed a usage study showing that households making less than $10,000 per year use long distance services about half as much as those making more than $70,000 per year.[25] The Coalition estimates that 43 million households would pay over $700 million more in phone taxes under a numbers plan.[26] Additionally, Southern LINC, a wireless telecommunications network backed by four electric utilities in the South, also estimates that a numbers and/or connections-based system would increase costs for the lowest volume users.[27]

In contrast, AT&T and Verizon, both of which support a hybrid numbers-and-connections-based system, argue that adoption of such a hybrid scheme would result in a 10 percent reduction in revenues collected from consumers for the USF, from 48 percent to 38 percent.[28] However, this percentage reflects the average net reduction, and while a majority of consumers may see a decrease, the most vulnerable populations may still experience a negative impact.

The Commission also seeks comment on how on to apportion revenues from bundled services that include both assessable and non-assessable services. Specifically, it asks whether and how it should modify its current bundling apportionment rules.[29] Additionally, the FCC seeks comment on the most appropriate method to allocate

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[24] Letter from Maureen A. Thompson, Executive Director, Keep USF Fair Coalition, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, at 8-9 (filed Mar. 27, 2006).
[25] *Id.* at 9.
[26] *Id.*
[27] Comments of SouthernLINC Wireless, GN Docket No. 09-47 et al., at 6 (filed Dec. 7, 2009).
[28] Letter from Mary L. Henze, AT&T, and Kathleen Grillo,Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, at 2 (filed Oct. 20, 2008).
[29] *FNPRM* at paras. 101-120.

revenues between interstate and intrastate jurisdictions.[30] The CPUC reserves its right to comment on these issues after it reviews filed comments.

2. Numbers-Based System

The FCC proposes that under a numbers-based system, providers would be assessed based on their telephone number inventory.[31] Each carrier would be assessed a standard monthly amount per "assessable" number ($1/ month), with potentially higher and lower tiers for certain categories of numbers.[32] The monthly assessment per number would be calculated by applying a formula based on the USF demand requirement and the relevant count of numbers.[33]

At first blush, the numbers-based assessment seems attractive, but implementation is problematic. The FCC already has created six categories of numbers that carriers must report to the FCC semi-annually.[34] However, the FCC has proposed that carriers pay their contribution based on "assessable" numbers, which is not an existing category of numbers.[35] The FCC's proposed definition would limit "assessable" numbers to those assigned to end users for certain specified purposes, potentially leaving millions of numbers out of the calculation for universal service assessment.[36] In addition, a numbers-only methodology would not encompass many broadband services.[37]

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[30] *Id.*, at paras. 121-142.
[31] *FNPRM* at para. 285.
[32] *Id.*
[33] *Id.*
[34] *Id.,* at para. 295.
[35] *Id.*
[36] *Id,*. at para. 296.
[37] *Id.*

In the *FNPRM*, the FCC identified other categories of numbers that may warrant differential treatment including cyclical numbers, assigned but not operational numbers, available but not assigned numbers, assigned but non-working numbers, numbers used for routing purposes, and toll free numbers.[38] Other providers of services that use numbers have also historically asked for an exemption or differential treatment. This includes providers of family plan numbers, telematics providers, one-way service providers, two way paging services and alarm companies.[39] All of these different providers may seek special treatment for each category of numbers and if the Commission chose to grant these requests, there is the potential for market distortion. The multiplicity of different categories of numbers shows how much more complicated this system would be to administer.

Further, a numbers-based system could disproportionately affect both vulnerable populations and small users of interstate telecommunications who have many numbers, but low usage. This would include government agencies, military bases, universities, and hospitals.[40] According to the Association for Information Communications Technology Professionals in Higher Education, universities often have a large quantity of numbers that are not often in use and even when in use, are not often used for interstate telecommunications.[41] Thus, under a numbers-based system, they could see their contributions increase significantly.

[38] *Id.,*at paras. 303-308.
[39] Id., at paras. 312-321.
[40] Letter from Patricia Todus, President, ACUTA, & Mark Luker, Vice President, EDUCAUSE, CC Docket No. 96-45, Attach. at 6-8 (filed May 31, 2006).
[41] *Id.*

Lastly, proponents of numbers-based systems also argue that such a system would be less susceptible to opportunities for "gaming" the system. There are many technologies today that provide services that are similar to landline telephony services that do not utilize North American Numbering Plan (NANP) numbers or only partially traverse the PSTN.[42] Given this, a numbers-based system could offer many opportunities for service providers to avoid their equitable contributions to the USF.

3. Connections-Based System

Under a connections-based system, providers would be assessed based on the number of connections to a communications network provided to customers.[43] Providers would contribute a set amount per connection, regardless of the revenues derived from that connection.[44] This method poses several problems.

First, as the Commission notes, unlike revenues, "connection" is not a universally-recognized or tracked unit, and the FCC would need to create a definition of "connection" for purposes of moving to a new connections-based contribution methodology.[45] The definition of an assessable "connection" is therefore integral to any connections-based proposal. Yet, defining connections could be problematic because connections can be defined based on facilities or services, each of which raises difficulties in implementation.[46]

[42] Comments of SouthernLINC Wireless, GN Docket No. 09-47 et al., at 7 (filed Dec. 7, 2009).
[43] *FNPRM* at para. 220.
[44] *Id.*
[45] *Id.,* at para. 226.
[46] *Id.,* at para. 227.

Moreover, many of the connections-based proposals call for the implementation of tiers for enterprise consumers which would be based on either connection speed or capacity.[47] This method would ensure that a greater burden is placed on enterprises, which account for more usage than residential consumers. However, this proposal raises many issues. Initially, it may be difficult to even determine whether a connection should be assessed as a residential connection or a business connection.[48] In the past, the FCC has considered assessing a connection as "residential" if a subscriber line charge (SLC) is associated with that connection.[49] However, wireless and VoIP providers do not charge their customers SLCs. Even establishing a standard method for determining speeds for broadband connections in order to impose a contribution may be problematic because of the variability in actual measured speeds as well as advertised speeds. XO Communications, a provider of telecommunications services for enterprises, also argues that connection speed correlates to the amount of bandwidth that may be available for usage.[50] Therefore, many customers purchase excess speed for backup or future growth.[51] Discouraging this practice could lead to poor network management issues.[52]

Additionally, a connections-based system still presents some of the same problems encountered under the revenue-based system. For example, if contributions were required only on those connections provided to "end users," determining who is

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[47] *Id.,* at para. 249.
[48] *Id.*
[49] *Id.,* at para. 255.
[50] Letter from Brad E. Mutschelknaus, Counsel, XO Communications, LLC to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, at 3 (filed Sept. 17, 2010).
[51] *Id.*

[52] *Id.*

providing services to an end user, and therefore must contribute, would still be problematic.[53]

Lastly, a connections-based system is unlikely to diminish the number of providers who request exemptions, which complicates the contribution collection process. In the past, paging providers, providers offering free services, telematics, wireless prepaid plans and family wireless plans have all requested that such connections be treated differently because a flat $1 per month fee would increase their USF obligations dramatically.[54]

4. Hybrid Numbers/Connections-Based System

The last alternative proposed by the FCC is a hybrid numbers-connections-based system. This proposal would require residential numbers to be assessed based on a numbers-based methodology and business lines to be assessed on a connections-based methodology.[55] Another alternative would assess providers a flat fee for each assessable telephone number and assess services not associated with a telephone number as a connection.[56] However, this option poses all of the same concerns as each system individually and also would place a greater burden on providers who would have to track both numbers and connections in order to make contributions.

C. Improving the Administration of the System

The Commission seeks comment on potential rule changes that would reduce the costs associated with complying with contribution obligations and promote the

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[53] *FNPRM*, at para. 241.
[54] *Id.,* at para. 251.
[55] *Id,*. at para. 322.
[56] *Id.*

transparency and clarity of the contribution system.[57] The CPUC recommends that the quarterly contribution factor be revised so that it is calculated on either a six-month interval or annually. California also supports the Universal Service Administrative Company (USAC) using two prior quarters rather than a single prior quarter to determine the adjustment that would be applied to the subsequent contribution factor as exemplified in Chart 8 of the *FNPRM*.[58] This reform would increase the predictability of the contribution factor and help reduce the cost of administering the USF.

D. Recovery of Universal Service Contributions from Consumers

Finally, the FCC seeks comment on whether it could promote fairness and transparency by modifying the methods by which providers recover the costs of universal service contributions from consumers.[59] In particular, it seeks comment on whether to require additional information on customer bills about contributions, whether to limit the flexibility of contributors to pass through contribution costs as a separately stated line item on customer bills, and whether to extend to non-incumbent eligible telecommunications carriers (ETCs) existing rules that preclude incumbent carriers from recovering from their Lifeline subscribers universal service contributions for Lifeline offerings.[60]

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[57] *Id,*.at para. 342.
[58] *Id*., at paras. 357-358.
[59] *Id.,* at para. 387.
[60] *Id.,* at paras. 389-397; 401-410.

Currently, a carrier may recover its federal universal service contribution costs through a line item on a customer's bill.[61] The Commission asks whether it should prohibit line items recovery of the USF surcharge. Under such an approach, while contributors would retain the flexibility to include the cost of contributing to the universal service fund in determining their overall rate structure, they would not be permitted to represent any line item on end-user customer bills as a federal universal service charge. For instance, section 54.712 of the Commission's rules, which currently specifies that line items may not exceed the assessable portion of the bill times the contribution factor, could be replaced with the following rule:

> 1. *Federal universal service contribution costs may not be recovered by contributors as a separate line-item charge on a customer's bill."*[62]

For California, however, the proposed rule contradicts CPUC policies which require transparency of program surcharges on customer bills. We therefore oppose this proposal to prohibit providers from listing line items showing the USF contribution on customer bills.

California also supports extending to non-incumbent ETCs the existing Commission's rules precluding incumbent carriers from recovering from their Lifeline subscribers universal service contributions for Lifeline offerings. Adoption of such a policy is consistent with efforts to promote technological and competitive neutrality as well as continuing the practice of removing the USF surcharge burden from those consumers qualified to receive USF Lifeline support.

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[61] 47 C.F.R.§54.712.
[62] *FNPRM* at para. 394.

III. CONCLUSION

For the reasons stated, the CPUC urges the Commission to broaden the contribution base to include all services that touch (or travel over) the public communications network regardless of whether the traffic is *switched* or not. In the alternative, the FCC should broaden the base of contributors to include, at the least, text messaging service, one-way VoIP service, and broadband and broadband Internet access service. California also recommends that the FCC use a expanded revenue-based contribution system to assess contributions. And, California recommends that the USAC calculate the adjustment of the contribution factor over a period of two quarters and move to a six-month or annual contribution assessment to help lower costs and improve the administration of the contribution system. The CPUC also opposes prohibiting the inclusion of the USF surcharge as a line item on customer bills. Finally, California urges the Commission to prohibit all contributors from assessing contributions on Lifeline service offerings.

Respectfully submitted,

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